

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 0:16-CV-61511-WJZ

CAROL WILDING, et al.,

Plaintiffs,

v.

DNC SERVICES CORP., d/b/a  
DEMOCRATIC NATIONAL COMMITTEE,  
et al.,

Defendants.

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**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF  
PROCESS, OR, IN THE ALTERNATIVE, EXTEND TIME TO ANSWER OR RESPOND  
TO COMPLAINT**

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The Democratic National Committee (“DNC”) and Former DNC Chair Debbie Wasserman Schultz<sup>1</sup> (together, “Defendants”) respectfully submit this Reply in Support of their Motion to Dismiss for Insufficient Service of Process or, in the Alternative, Extend Time to Answer or Respond to Complaint (the “Motion to Quash” or “Defs.’ Mot.”) (ECF No. 11).<sup>2</sup>

**I. INTRODUCTION**

Plaintiffs do not dispute that the affidavits of service they filed with the Court in this action are factually incorrect. They do not dispute that the person handed copies of the summons and complaints was not the person identified as the recipient in those affidavits. Nor do they dispute that the recipient was not someone upon whom service may be effectuated for either Defendant under the plain terms of Federal Rule of Civil Procedure 4. Instead, Plaintiffs rely exclusively on out-of-circuit case law to argue that they should be excused from complying with Rule 4, contending that actual notice of the suit is sufficient. That is not the law in the Eleventh Circuit. For the reasons set forth in the original Motion and those that follow, the Court should find that

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<sup>1</sup> As of July 25, 2016, Debbie Wasserman Schultz is no longer the DNC Chair.

<sup>2</sup> Although originally styled as a motion to dismiss, the Court has construed Defendants’ motion as a motion to quash. *See* Order Setting Evidentiary Hearing (ECF No. 25).

service of process failed to comply with Rule 4 and grant the Motion to Quash.<sup>3</sup>

## II. ARGUMENT

The law in this Circuit is clear: if Plaintiffs do not strictly comply with Rule 4, service of process should be quashed. Finding otherwise would not only run contrary to well-established Circuit case law, but would set dangerous precedent making it virtually impossible for private corporations to put into place effective internal processes to ensure that the appropriate decision-makers are notified every time that the entity becomes subject to personal jurisdiction as a result of legal process. These concerns are particularly acute for an organization such as the DNC, where its involvement in the political process makes it an attractive target for political vendettas masquerading as litigation. Indeed, Plaintiffs' counsel's refusal to take simple steps to ensure that process was legally effectuated (or to cure service, once made aware that it was deficient) makes no sense, except as confirmation that this action is nothing more than political theatre. Nothing else adequately explains counsel's refusal to effectuate service by serving defense counsel, who has offered to accept service three separate times, or by alternative means such as registered mail. Either approach could have easily been achieved in compliance with Rule 4, but neither would make as dramatic a YouTube video as the one upon which Plaintiffs rely in their response. That this case is fueled by political animus is also evidenced by the abusive and false public statements that Plaintiffs' counsel have made and continue to make to this day about Defendants and other prominent Democratic politicians, and their attempts to turn virtually every aspect of this litigation—including the tragic death of a process server—into fodder to promote baseless and incendiary conspiracy theories. Thus, permitting Plaintiffs to proceed without strict compliance with Rule 4 in this case raises the very real risk that other members of Plaintiffs' carefully cultivated audience could act in similar fashion, to the prejudice of Defendants.

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<sup>3</sup> Based on the affidavits of service, the DNC was under the impression that two individuals were involved in the service attempt. *See* Aff. of Serv. on DNC (listing Shawn Lucas as process server) (ECF No. 6); Aff. of Serv. on DNC Chair (listing Brandon Yoshimura) (ECF No. 7). Although the Motion to Quash was explicit on this point, *see* Defs.' Mot. at 3, Plaintiffs' response does not address it. Based on the video upon which Plaintiffs rely, it appears that there was one process server accompanied by a filmmaker. Thus, the DNC now believes that the listing of two different process servers on the affidavits constitutes another factual error in those documents.

**A. There Is No Basis For Finding Service Was Proper Under the Applicable Law**

Just as the court in *Woodbury v. Sears, Roebuck & Co.*, 152 F.R.D. 229 (M.D. Fla. 1993)—a case involving circumstances markedly similar to those here—this Court should find the attempt at service on Defendants was inadequate under Rule 4. In *Woodbury*, the plaintiff attempted to serve the defendant corporation’s file maintenance leader (though listed a different employee on the process papers). *Id.* at 232. Even though the plaintiff received a certified letter from the defendant’s manager “stating among other things: ‘Your summons was delivered to this office,’” *id.* at 235, and the employee who was served held a managerial position, the court still found that service was insufficient, because the rules of process are to be strictly construed and, “[i]t is clear, based on the record and the affidavit of [the employee], that [the person served] is neither an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process.” *Id.* In rejecting the plaintiff’s argument that “service was sufficient as long as someone at Defendant Company received the service,” the court noted that the out-of-circuit cases cited to suggest service on a corporation’s receptionist or bookkeeper were permissible were “clearly distinguishable” because, in one, the process server waited in the lobby after serving the receptionist until she returned and “affirm[ed] that she had delivered the papers to the corporate officer before” the process server left, *id.* at 232, 235, and, in the other, the bookkeeper who was served expressly represented that he was the office manager, *id.* at 236.<sup>4</sup>

If anything, the circumstances here present an even clearer case that service was improper. Unlike the employees involved in *Woodbury*, Ms. Herries is not in a leadership position at the DNC. Plaintiffs do not dispute that all that the process server knew about Ms. Herries’ role at the DNC was her statement that she was, “just with the DNC upstairs.” Pls.’ Br. at 1, 2, 4. That statement in no way suggested she was authorized to accept service pursuant to Rule 4 on behalf

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<sup>4</sup> Plaintiffs’ attempt to distinguish *Woodbury* stating it was “not even clear whether the employee … received service,” Pls.’ Resp. In Opp’n to Defs.’ Mot. to Dismiss (“Pls.’ Br.”) at 8 (ECF No. 24), is not supportable. To the contrary, the court stated that it was “inclined to believe that the Defendant did receive the summons … [and, in any event, i]f the prescribed statutory method [for service] is not followed, the fact that the individual Defendant actually received notice does not necessarily make the service valid.” *Woodbury*, 152 F.R.D. at 235.

of either Defendant. As in *Woodbury*, Ms. Herries made no promise to pass on the papers to a person with legal authority to accept service. She made no representation that she was an office manager. She did not even give—and she was not asked—her last name, position, or title. And the process server appears to have been under the same mistaken belief as the plaintiff in *Woodbury*, “that service was sufficient as long as someone at Defendant Company received the service, no matter who that person was.” 152 F.R.D. at 232..

That Ms. Herries did not expressly inform the process server that she was not authorized to accept service is immaterial. It is *Plaintiffs*’ responsibility to ensure Defendants are properly served, *not* the responsibility of a junior DNC employee. *See Melchor-Garcia v. Dong Ying Corp.*, No. 12-22217-CIV, 2012 WL 6553986, at \*1 (S.D. Fla. Dec. 14, 2012) (“[I]t is the plaintiff’s burden to show proper service of the complaint”); *Martin v. Salvatierra*, 233 F.R.D. 630, 632 (S.D. Fla. 2005) (same). Similarly, Plaintiffs’ assertion that service was proper because Ms. Herries “responded to the front desk’s call for someone to speak with the process server,” Pls.’ Br. at 4, is legally unavailing. Agreeing to speak to a process server and taking the documents handed to her—particularly under the circumstances here, where Plaintiffs’ sole attempt at service was on a Friday afternoon before a holiday weekend, and their process server insisted on handing the papers to someone, *anyone*, at the DNC that day—did not convert Ms. Herries into a person legally empowered to accept service of process for either Defendant.

The YouTube video that Plaintiffs rely upon is entirely consistent with Ms. Herries’ affidavit and provides further reason for granting the Motion to Quash. In particular, it captures an exchange that sounds to be between the process server and the filmmaker accompanying him, in which a male voice can be heard saying, “I wonder who they’re going to send down to see us ... I’m sure we’re probably not going to get our ... wish list candidates to deliver these to *but anybody in the office can accept them.*”<sup>5</sup> This seriously undermines Plaintiffs’ contention that the process server handed Ms. Herries the documents because she held herself out to be a person who

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<sup>5</sup> JamPAC “YOU GOT SERVED!” *DNC and Debbie Wasserman Schultz get served in Wilding class action*, 9:35-9:50, YOUTUBE (July 3, 2016) (“YouTube Video”), <https://www.youtube.com/watch?v=D3FMgZruOXE> (last visited Aug. 11, 2016).

was legally authorized to accept service. Pls.’ Br. at 4-5. *See also Wells v. City of Portland*, 102 F.R.D. 796, 799 (D. Or. 1984) (rejecting argument that “because the City has not shown that the administrative assistant to the City Attorney is not one of the persons designated for service, the City should not prevail on its motion without presenting evidence” and holding “it is the party on whose behalf service is made who has the burden of establishing its validity”) (citing *Familia De Boom v. Arosa Mercantil, S.A.*, 629 F.2d 1134, 1139 (5th Cir. 1980)).

Plaintiffs’ attempts to distinguish the precise factual scenarios involved in several of the Eleventh Circuit and Florida cases cited in the Motion miss the point. Each of those cases, individually and as a whole, underscore that it is the law in this jurisdiction that actual notice does not suffice: Plaintiffs were obligated to comply with Rule 4 and their failure to do so requires that the Motion to Quash be granted. *See Hives v. Bisk Educ., Inc.*, No. 8:15-CV-262-T-23MAP, 2015 WL 3791423, at \*1-2 (M.D. Fla. May 7, 2015) (holding defendant’s lawyer was neither registered agent nor authorized to accept service and stating, “[w]here a party submits affidavits to rebut the validity of service of process, the burden shifts back to the plaintiff to produce evidence supporting jurisdiction by showing service was properly made”) (citing *Meier ex rel. Meier v. Sun Int’l Hotels, Ltd.*, 288 F.3d 1264, 1269 (11th Cir. 2002)); *Fly Brazil Grp., Inc. v. The Gov’t of Gabon, Afr.*, 709 F. Supp. 2d 1274, 1279 (S.D. Fla. 2010) (Zloch, J.) (adopting Report and Recommendation finding “a party challenging sufficiency of service of process must specify the particular way or ways in which the serving party failed to satisfy the service-of process rules... [o]nce it does ... the plaintiff bears the burden of proving adequate service of process”) (internal citations omitted). Cf. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999) (describing as “a bedrock principle: [a]n individual or entity named as a defendant is not obliged to engage in litigation unless notified of the action, and brought under a court’s authority, by formal process”). Plaintiffs’ invitation to the Court to find that service of process was adequately effectuated *despite* Plaintiffs’ failure to comply with Rule 4 is an invitation to commit reversible error. *See De Gazelle Grp., Inc. v. Tamaz Trading Establishment*, 817 F.3d 747, 750 (11th Cir. 2016) (reversing finding that plaintiff adequately served defendant corporation via

FedEx, “since notice does not confer personal jurisdiction on a defendant when it has not been served in accordance with Rule 4”).

Plaintiffs also altogether ignore that different service of process rules apply for serving a corporation (such as the DNC) and an individual (such as the DNC’s former Chair), even when the individual is sued, as the former DNC Chair is here, in their corporate capacity. Defendants make this point in the original Motion, arguing that Ms. Herries was not authorized to accept service either on behalf of the DNC *or* on behalf of the former Chair, and explaining the different legal requirements for serving a corporation or effectuating personal service. *See* Defs.’ Mot. 4-8. But the cases cited by Plaintiffs only go to the question of whether service on a *corporation* was proper. They fail to cite any authority standing for the proposition that personal service on an individual may be achieved by handing a summons and complaint to a special assistant for someone other than the defendant. *See, e.g., Perez Lopez v. Mangome*, 117 F.R.D. 327, 328 (D. P.R. 1987); *Wells*, 102 F.R.D. at 799. *See also Morgan Stanley Smith Barney, LLC v. Gibraltar Private Bank & Trust Co.*, 162 So. 3d 1058 (Fla. 3d DCA 2015); *Nationsbanc Mortg. Corp. v. Gardens N. Condo. Ass’n, Inc.*, 764 So.2d 883, 885 (Fla. 4th DCA 2000). Because Plaintiffs fail to even address the insufficiency of service on the Chair, they waive any argument that she was properly served. *Iraola & CIA, S.A. v. Kimberly-Clark Corp.*, 325 F.3d 1274, 1284 (11th Cir. 2003) (“Failure to raise an issue, objection or theory of relief in the first instance … is fatal.”) (citation omitted).

Finally, Plaintiffs fail to address the fact that they have yet to even attempt to serve the First Amended Complaint. That Defendants’ counsel discovered the First Amended Complaint on the docket does not excuse Plaintiffs’ disregard for the service of process rules where none of Defendants’ counsel had entered an appearance in this case at the time it was filed and where Defendants were not properly served in the first instance. *See, e.g., Martin*, 233 F.R.D. at 632; *Gellert v. Richardson*, No. 95-256-CIV-ORL-19, 1996 WL 107550, at \*2 (M.D. Fla. 1996).

## **B. Public Policy Also Favors Granting the Motion to Quash In This Case**

Although the Court may and should grant the Motion to Quash based on the legal authority

discussed above, Plaintiffs make several public policy arguments in their brief that warrant addressing. Contrary to Plaintiffs' assertions, to the extent that it is even relevant, public policy favors granting the Motion, not denying it. As explained below, Plaintiffs' policy arguments are not well founded. Further, in this unusual case, where Plaintiffs have made evident their intention to attempt to leverage every aspect of this litigation to promote propaganda about Defendants, finding an exception to the well-settled rule in this Circuit that strict compliance with Rule 4 is required would only encourage and embolden Plaintiffs and others in such behavior.

As an initial matter, Plaintiffs' policy arguments as to why the Court should find service effective on Ms. Herries are misplaced, and evidence several fundamental misunderstandings about the law. For instance, one of the several errors in the affidavits of service was to describe the DNC as a "Government Agency." In their response, Plaintiffs state that dismissal of this case would be "tantamount to curtailing Plaintiffs' right to petition their government for redress of grievances[.]" Pls.' Br. at 8. But the DNC is not, and has never been, a government agency. Whatever dispute Plaintiffs have with Defendants is a dispute with a private entity. Moreover, the rules for serving a government agency are substantially more involved than the rules for serving a private corporation or individual.<sup>6</sup> Thus, Plaintiffs' claim that requiring them to comply with the much less demanding rules of service applicable here somehow burdens their "rights" is nonsensical. Plaintiffs also make much ado about the security of the DNC's building and the lack of DNC staff present at its headquarters the Friday before the Fourth of July weekend to accept service. Pls.' Br. at 4-5. However, Plaintiffs had at their disposal alternative methods of service to ensure that they complied with the rules. For example, Plaintiffs could have chosen to serve Defendants by mail. *See* D.C. Super. Ct. Civ. R. 4(c)(4), (e), (h). They could have chosen to

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<sup>6</sup> *See, e.g.*, Fed R. Civ. P. 4(i)(1) (requiring plaintiff serving the United States, its agencies, corporations, officers or employees to serve summons and complaint on local U.S. attorney, send copy by registered or certified mail to U.S. Attorney General, and send copy by registered or certified mail to the agency); D.C. Super. Ct. Civ. R. 4(i) (same); D.C. Super. Ct. Civ. R. 4(j) (requiring plaintiff serving D.C. government, an officer or agency thereof, or other governmental entities to serve summons, complaint, and initial order by delivery or by mail to D.C. mayor, or designee and D.C. corporation counsel or designee); Fla. Stat. § 48.111 (requiring plaintiff serving public agency or officer to serve summons and complaint on, in relevant part, the chair, vice chair, or any member of the governing board).

attempt service on a day that did not coincide with a holiday weekend. Or they could have accepted Defendants' counsel's offers to accept service pursuant to the waiver provisions of Rule 4. *See* Defs.' Mot. at 14; *see also* Ex. A (correspondence between counsel regarding service issue).<sup>7</sup> Instead, Plaintiffs' counsel—two of whom run a pro-Bernie Sanders Super PAC called "JAMPAC," *see* Ex. B—appear to have engaged a filmmaker to accompany a process server in person to the DNC on the Friday before the Fourth of July weekend so that they could post a video titled "YOU GOT SERVED!" to their Super PAC's YouTube page. *See infra* n.5. That choice does not enable Plaintiffs to ignore the applicable rules for process.<sup>8</sup>

If anything, the policy arguments support granting the Motion to Quash, not permitting this action to continue despite insufficient service of process. The rules of service exist for good reasons. They ensure that defendants—and in the case of a defendant corporation, the people empowered to act legally on its behalf—receive timely notice of a lawsuit. *See Bruggemann v. The Amacore Grp., Inc.*, No. 8:09-cv-2562-T-30MAP, 2010 WL 3419269 at \*1 (M.D. Fla. Aug. 27, 2010) ("The central purpose of service of process is to 'supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections.'" (quoting *Henderson v. United States*, 517 U.S. 654, 672 (1996)). If the Court finds that Plaintiffs' method of service is sufficient, it would create dangerous precedent that could very well lead to process servers handing legal papers to anybody in the building. Corporations would risk default judgment on a much more frequent basis because the person who receives the legal papers may not deliver them to an appropriate decision-maker or representative in a timely manner. Allowing Plaintiffs to skirt the rules for service of process serves no other function than to reward their disregard for the law.

The particular circumstances of this case provide further reason to reject Plaintiffs' request that the Court bend the rules to find service as attempted was proper. It is clear from public

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<sup>7</sup> All references to exhibits are to exhibits to the Declaration of Elisabeth C. Frost, submitted together contemporaneously with and in support of this reply brief.

<sup>8</sup> For the same reasons, Plaintiffs' assertion that Defendants are "taking affirmative steps to evade service of process," Pls.' Br. at 6, is plainly false. As evidenced by the attached emails, Defendants' counsel has offered to accept service in this matter three times. *See* Ex. A.

statements by Plaintiffs' counsel on various social media sites that this litigation is a political vendetta in which Plaintiffs' counsel's main goal is to attempt to legitimize completely false conspiracy theories about Defendants. Since the inception of this lawsuit, Plaintiffs' counsel Jared Beck has repeatedly taken to social media to debase Defendants and members of the Democratic Party. In his Twitter feed, for example, Mr. Beck repeatedly refers to the DNC as "shi\*bags" and uses other degrading language in reference to Defendants and other prominent Democrats. Ex. C.<sup>9</sup> On July 14, 2016, for example, he tweeted, "F\*ck you President Obama." Ex. D. He recently called the Interim DNC Chair Donna Brazile "a royal f\*cking piece of sh\*t." Ex. E. Under the Twitter name "The Cranky Lawyer," Plaintiffs' counsel Elizabeth Lee Beck has called Congressman Keith Ellison "a wuss" and "a major wussbag." Ex. F.

The derogatory statements above are, by themselves, astonishing, but they are far from the worst of it. After a DNC staffer was tragically murdered, Mr. Beck promoted baseless conspiracy theories that Defendants or other Democrats are responsible in some way for his death. Exs. G & H. More recently, Mr. Beck has posted videos implying that the DNC or Secretary Clinton may be responsible for the death of the process server who signed the inadequate affidavits in this case. *See* Ex. I (citing to [www.undergroundworldnews.com](http://www.undergroundworldnews.com), DAH00777, *Another Mysterious Death: Shawn Lucas Found Dead Shortly After Serving DNC Papers*, 00:01-00:30, YOUTUBE (Aug. 5, 2016) <https://www.youtube.com/watch?v=TydLyHJijRw>) ("You are looking at what may be the latest victim here in a string of mysterious deaths that is connected to this whole DNC thing, and everything with the Democratic Party, Hillary Clinton, ... and now Shawn Lucas ... he has been discovered deceased ....").<sup>10</sup> Indeed, in the less than two month period that has elapsed since Plaintiffs first filed this action, Plaintiffs' counsel have taken virtually every opportunity to use this litigation to support its public attack on Defendants—including by publishing the video of service on their Super PAC's website, and even by posting email received from Defendants'

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<sup>9</sup> Mr. Beck's posts do not contain asterisks.

<sup>10</sup> Defendants would prefer not to have to mention either the passing of the DNC employee or the process server out of respect for their grieving families. However, Plaintiffs' counsel's outrageous conspiracy theories and peddling of fiction related to the same leave Defendants little choice but to address.

counsel sent in attempts to engage in good faith conferences about procedural and substantive issues on a “DNC Fraud Lawsuit” Facebook page maintained by Plaintiffs’ counsel, as well as on their Super PAC’s website. *See Ex. J.*<sup>11</sup>

Given the audience that Plaintiffs have cultivated, permitting them to proceed without strict compliance with Rule 4 in this litigation raises a very serious risk to Defendants that they will be subject to similar efforts to drag them into litigation through illegitimate means. Although this time, notice of the action was conveyed to the appropriate decision makers, there is no guarantee the same will be true the next time.

### III. CONCLUSION

For the aforementioned reasons, Defendants respectfully request that the Court grant the Motion to Quash. Should the Court find that service was proper, Defendants alternatively request that they be granted an extension of time to file a substantive motion to dismiss the First Amended Complaint. Plaintiffs do not appear to oppose this alternative request.

Dated: August 15, 2016

Respectfully submitted,

s/ Gregg Thomas

Gregg D. Thomas  
Florida Bar No.: 223913  
601 South Boulevard P.O. Box 2602 (33601)  
Tampa, FL 33606  
Telephone: (813) 984-3060  
Facsimile: (813) 984-3070  
gthomas@tlolawfirm.com

Marc E. Elias (admitted *pro hac vice*)  
Graham Wilson (admitted *pro hac vice*)  
Bruce Spiva (*pro hac vice* motion to be submitted)  
Elisabeth C. Frost (admitted *pro hac vice*)  
Ruthzee Louijeune (admitted *pro hac vice*)  
PERKINS COIE LLP  
700 13th Street, N.W. , Suite 600

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<sup>11</sup> These posts appear to be selective. Among other things, as of today’s filing Plaintiffs’ counsel appear to have not posted either the July 19, 2016 email in which Defendants’ counsel explained how service was improper and offered—for a second time—to accept service or to meet and confer, to which Plaintiffs’ counsel never responded, or the August 11, 2016 email in which Defendants’ counsel again offered to accept service. *See Ex. K.*

Washington, D.C. 20005  
Telephone: (202) 654-6200  
Facsimile: (202) 654-9959  
melias@perkinscoie.com  
gwilson@perkinscoie.com  
bspiva@perkinscoie.com  
efrost@perkinscoie.com  
rlouijeune@perkinscoie.com

*Attorneys for Defendants*

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**CERTIFICATE OF SERVICE**

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I HEREBY CERTIFY that a true and correct copy of the foregoing Reply In Support of Motion to Quash For Insufficient Service of Process or In the Alternative To Extend Time to Answer or Respond to Complaint was served by CM/ECF on August 15, 2016 on all counsel or parties of record on the service list.

*Gregg D. Thomas*  
Attorney